

1 The Honorable John C. Coughenour
2 James L. Robart

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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8 KELLY USANOVIC, individually, and on
9 behalf of all others similarly situated,

10 Plaintiff,

11 vs.

12 EXP REALTY, LLC, a Washington limited
liability company,

13 Defendant.

14 NO. 2:23-cv-00687-JCC
JLR
[PROPOSED]

15 ORDER APPROVING STIPULATION
REGARDING NUMEROSITY

16 THIS MATTER comes before the Court on the Parties' Joint Motion to
17 Approve the Parties' Stipulation Regarding Numerosity for Purposes of Plaintiff's
18 Anticipated Motion for Class Certification (ECF No. 37) (the "Motion"). The Court,
19 having considered the Motion and Stipulation, and being familiar with the files and
20 pleadings in this matter, is fully advised.

21 NOW THEREFORE, the Parties' Motion is GRANTED and the Stipulation
22 Regarding Numerosity is hereby APPROVED.

23
24 IT IS SO ORDERED.

25 DATED this 11th day of July, 2024.
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27 The Honorable John C. Coughenour
United States District Judge James L. Robart

[PROPOSED] ORDER APPROVING
STIPULATION REGARDING NUMEROSITY
FOR PURPOSES OF PLT'S ANTICIPATED
MOTION FOR CLASS CERTIFICATION
CASE NO. 2:23-cv-00687-JCC
JLR

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KELLY USANOVIC, individually, and on behalf of all others similarly situated,

NO. 2:23-cv-00687-JCC

Plaintiff,

**STIPULATION REGARDING
NUMEROSITY FOR PURPOSES OF
PLAINTIFF'S ANTICIPATED MOTION
FOR CLASS CERTIFICATION**

EXP REALTY, LLC, a Washington limited
liability company,

Defendant.

1. Plaintiff, Kelly Usanovic (“Plaintiff”) and Defendant eXp Realty, LLC (“eXp”), collectively the “Parties,” by and through their respective counsel, subject to the Court’s approval, and for the purpose of limiting burdensome class discovery prior to class certification, hereby stipulate and agree for the purposes of the above-captioned action only, as follows (the “Stipulation”): Plaintiff anticipates filing a motion for class certification pursuant to Fed. R. Civ. P. 23 in the above-captioned matter. Plaintiff anticipates defining the putative class as: All persons in the United States who from four years prior to the filing of this action through class certification (1) one or more eXp real estate agents called more than one time in the aggregate using a dialer from Mojo, Vulcan7, or RedX, or a substantially similar dialer, (2) as a result of being obtained as a lead from Mojo, Vulcan7, or RedX, or a substantially similar lead provider, (3) within any 12-month period, (4) where the person’s residential telephone

1 number had been listed on the National Do Not Call Registry for at least thirty days,
 2 (5) for substantially the same reason eXp's real estate agents called Plaintiff. eXp
 3 intends to dispute that this class or any other class meets the requirements for
 4 certification.

5 2. For the exclusive purpose of Plaintiff's anticipated motion for class
 6 certification pursuant to Fed. R. Civ. P. 23, eXp agrees to stipulate that the element of
 7 numerosity is satisfied. eXp also agrees not to challenge class certification based on the
 8 absence of evidence that could only have been developed if Plaintiff had obtained a
 9 complete set of records of calls or leads by eXp real estate agents to putative class
 10 members. Notwithstanding the foregoing, eXp does not waive any other argument or
 11 position that a class should not be certified in the above-captioned action. eXp
 12 expressly preserves its right to raise any other argument or position in opposition to
 13 Plaintiff's motion for class certification, including but not limited to arguments or
 14 positions related to adequacy, commonality, typicality, predominance, superiority,
 15 ascertainability, and the feasibility of the methodology employed to identify class
 16 members.

17 3. Plaintiff agrees that, unless and until a class action is certified, she will
 18 limit any third party subpoenas for call or lead records to call and lead records
 19 associated with calls by the three eXp real estate agents that called Plaintiff, Ali
 20 Shahrohki, Carlos Mezquitan, and Igor Li. Plaintiff also agrees to advise any third
 21 parties to which broader subpoenas have already been issued regarding this agreed
 22 upon limitation. To the extent Plaintiff has already received records for any other real
 23 estate agents, Plaintiff agrees to not use those records unless and until a class action is
 24 certified.

25 4. If a class action is certified, eXp agrees that Plaintiff is entitled to obtain
 26 through third party subpoenas, and if necessary to compel production of, all call and
 27 lead records associated with all calls by eXp real estate agents to members of the class

1 certified by the Court, even if the deadline to complete discovery has already passed at
2 the time certification is granted.

3 5. If a class action is certified, eXp agrees to provide the dates of affiliation
4 with eXp for any real estate agent for whom Plaintiff obtains or has obtained records
5 and for whom eXp has records.

6 6. By entering into this Stipulation, eXp does not waive any argument or
7 position that it is not liable. eXp may continue to present all available defenses in the
8 above-captioned action.

9 7. This Stipulation can only be used in the above-captioned action and
10 cannot be used for any other purpose or in any other case.

11 8. By entering into this Stipulation, the attorneys for both Plaintiff and eXp
12 represent and warrant that their clients have agreed to the binding nature of this
13 Stipulation, and that they have the authority to enter into the stipulation in the above-
14 captioned action on behalf of their respective clients.

15 DATED this April 4, 2024

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17 KAUFMAN P.A.

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